

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VICTORIANO TAVAREZ, individually and on behalf  
of all others similarly situated,

Plaintiff,  
-v-

LIVE, LLC,

Defendant.

CIVIL ACTION NO.: 21 Civ. 9770 (RA) (SLC)

**ORDER**

**SARAH L. CAVE**, United States Magistrate Judge.

Before the Court is Plaintiff's request to adjourn the telephonic Settlement Conference scheduled for Tuesday, November 1, 2022. (ECF No. 29 (the "Request")). In the Request, Plaintiff's counsel, William Downes, stated that he had learned that Plaintiff had eye surgery on October 27, 2022 (the "Surgery") and, as a result, Plaintiff was physically unable to participate in the Settlement Conference. (*Id.*) On October 28, 2022, in response to the Court's October 27, 2022 Order (ECF No. 31), Downes filed a declaration stating that (i) Plaintiff's counsel informed Plaintiff of the Settlement Conference on September 20, 2022; (ii) Plaintiff's counsel first learned of Surgery on October 27, 2022; (iii) on October 28, 2022, Plaintiff's counsel learned from Plaintiff that he scheduled the Surgery on October 11, 2022; and (iv) Plaintiff expects to be able to participate in a Settlement Conference by November 28, 2022. (ECF No. 32 (the "Declaration")). Defendant opposes the Request and, in light of Plaintiff's alleged "history of continued eleventh hour adjournments[,]” seeks monetary sanctions and an order striking Plaintiff's Complaint for failure to prosecute. (ECF No. 30). In response to the Declaration, Defendant requested an order directing Plaintiff's physician to submit an affidavit attesting to Downes' statements regarding

the Surgery and to Plaintiff's "condition and level of blindness as alleged in the Complaint[.]"  
(ECF No. 33).

Plaintiff's Request is GRANTED. While it is apparent Plaintiff's counsel should have been aware of the need for the Request sooner, it is equally apparent that proceeding with the Settlement Conference at this time would not be productive. Accordingly, the Court orders as follows:

1. The Settlement Conference scheduled for November 1, 2022 is ADJOURNED to **Tuesday, November 29, 2022 at 10:00 am.** The Court will provide the dial-in information prior to the settlement conference. Plaintiff's submission (see ECF No 28 at 4 ¶ 4) shall be emailed to the Court ([cave\\_nysdchambers@nysd.uscourts.gov](mailto:cave_nysdchambers@nysd.uscourts.gov)) and opposing by **November 21, 2022** and shall include a demand, which Defendant shall respond to (and inform the Court of its response) by **November 23, 2022**. Plaintiff is advised that he should not expect to recover attorneys' fees incurred in connection with or as a result of the delay caused by the Surgery.
2. Defendant's request for sanctions is DENIED WITHOUT PREJUDICE to renewal if the parties cannot settle and the case proceeds.

The Clerk of Court is respectfully directed to close ECF No. 29.

Dated:           New York, New York  
                  October 31, 2022

SO ORDERED.

  
\_\_\_\_\_  
SARAH L. CAVE  
United States Magistrate Judge